CHUAH HEE HUAT v. MAJLIS BANDARAYA SEBERANG PERAI

HIGH COURT MALAYA, PULAU PINANG
ANAND PONNUDURAI J
[CIVIL SUIT NO: PA-21NCVC-4-01-2022]
13 JANUARY 2023

Abstract – *The municipal council is not estopped from entering and demolishing an illegal structure/building on account of there being notices issued as per the procedure laid down under the law. Similarly, the granting of extensions of time do not estop the municipal council from entering and demolishing an illegal structure; especially when no representation is made that no enforcement action would be taken.*

LOCAL GOVERNMENT: *Local authority – Municipal council – Allegation of breach of duty of care – Claim for losses and damages – Claimant built building/structure on land without approval of municipal council – Municipal council issued notices and gave extensions of time to claimant before finally entering and demolishing building/structure – Whether notices issued and/or served properly – Whether claimant given reasonable time to vacate and remove items in building/structure – Whether, having granted extensions of time, municipal council was estopped from entering and demolishing building/structure – Whether claimant deprived of fundamental liberty under art. 5(1) of Federal Constitution – Whether conduct/action of municipal council in accordance with law and reasonable – Street, Drainage and Building Act 1974, ss. 72 & 120*

The plaintiff had built a warehouse/store ('building/structure') on his land, which was an agricultural land, to store furniture for his furniture business, without obtaining the approval of the defendant. The defendant issued a notice, addressed to the owner, and pasted the same on the building/structure, requesting to demolish the building/structure in 14 days of the said notice ('first notice'). The plaintiff wrote to the defendant, referring to the first notice, and sought an extension of time in respect of the demolishing of the building/structure pending the application for subdivision of the land. The defendant replied that the approval of the defendant was required for the building/structure and the plaintiff was required to submit proof of the appointment of the plaintiff's consultant. The defendant served another notice, giving 30 days' notice to vacate the building/structure, failing which the defendant could enter the building/structure and demolish the same ('second notice'). The second notice was served on an individual who acknowledged receipt of the same. The plaintiff appointed an architect as his consultant and the architect wrote to the defendant, requesting 30 days' extension of time to submit the plans and documents required by the

defendant to apply for the re-zoning of the land. The defendant granted the plaintiff an extension of 30 days. The consultant applied to re-zone the land from 'agriculture' to 'commercial' to Jabatan Perancang Bandar dan Desa Negeri Pulau Pinang ('JPBDPP') and informed the defendant that the plaintiff would demolish the building/structure in stages. The plaintiff was given a further extension of time pending the decision for re-zoning by the JPBDPP. However, the defendant later informed the plaintiff that its application for a licence and advertisement was rejected; the plaintiff was given a final notice to stop any business/activities on the land within 14 days. The plaintiff's application for re-zoning was then denied/rejected. The defendant issued a notice, referring to the first notice and providing 24 hours' notice, notifying that it would enter the premises and demolish the building/structure ('proviso notice'). Neither the plaintiff nor his consultant responded to the proviso notice. The defendant proceeded to enter the premises and demolished the building/structure by caving the roof which necessitated and included the removal of the furniture from the premise. Hence, the present claim by the plaintiff against the defendant for losses and damages suffered resulting from the demolition. The issues that arose for adjudication were, *inter alia*, (i) whether the first, second and proviso notices were issued and/or served properly and/or were there proper service on the plaintiff; (ii) whether the plaintiff was given reasonable time to vacate and remove the furniture to another place; (iii) whether, having appointed the architect and having granted the extensions of time as requested, the defendant was estopped from entering and demolishing the building/structure; and (iv) whether the plaintiff was deprived of his fundamental liberty, under art. 5(1) of the Federal Constitution ('FC').

Held (dismissing claim):

(1) The first notice was pasted on the building/structure and there could be no doubt that the plaintiff was aware of it as he had, in his letter, requested an extension of time to demolish the building/structure and had expressly referred to the first notice. The manner of service was not irregular as s. 120 of the Street, Drainage and Building Act 1974 ('the Act') allowed pasting at the plaintiff's address. Further, s. 120 of the Act provided that notices addressed to the 'owner' or 'occupier' was sufficient and deemed as proper service. Therefore, the service of the notices was proper and had, in fact, been received by the plaintiff. (paras 33-35)

(2) Section 72(1)(b) of the Act provided that once the local authority was satisfied that an illegal building had been erected, it may serve on the owner of the land a notice to demolish the building within a time as may be specified. This was certainly complied with *via* the first notice. Section 72(6) of the Act then provided that if the building was not

demolished, it may be thus demolished by the local authority and, in such case, it shall then give the occupier of the building no less than 30 days to vacate and the authority may then, after such period, enter the building. This was exactly what was complied with *via* the second notice. There was nothing in s. 72 of the Act that mandated a fresh notice every time any extension of time was granted. It could reasonably be expected that there would be appeals from owners for extensions of time and that the authority would have some discretion on the matter. It was inequitable for the plaintiff to have requested, and having been granted extensions of time, to now use the very same indulgence of the defendant against them. The notices issued were valid. The plaintiff had more than ample time to vacate the building/structure and the actions/conduct of the defendant was reasonable at all times and not tainted by *Wednesbury* unreasonableness. (paras 38-41 & 46)

(3) In each and every letter of the defendant granting the extension of time, the defendant had expressly reserved its right to proceed with enforcement action under the notices that had already been issued to the plaintiff. There was never any representation made to the plaintiff that no enforcement action would be taken or, for that matter, a further 30 days' notice would be given. There was nothing on the facts which required equitable intervention to invoke estoppel against the defendant, especially against a local authority carrying out its statutory function in relation to demolishing an illegal building/structure. (para 49)

(4) Whilst it could be assumed that the plaintiff had indeed suffered some losses as a result of the demolition, it was attributable to the plaintiff himself. Having followed the requisite procedure, the demolition of the building/structure was in accordance with the law and hence, art. 5 of the FC was not violated. (para 57)

Case(s) referred to

Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 FC ***(dist)***

Datuk Mohd Ali Hj Abdul Majid & Anor v. Public Bank Bhd [2014] 6 CLJ 269 FC ***(refd)***

Majlis Perbandaran Seberang Perai v. Four Winds Freight Logistics Sdn Bhd [2012] 9 MLJ 627 ***(dist)***

Mayland Valiant Sdn Bhd v. Majlis Perbandaran Subang Jaya [2018] 7 CLJ 165 CA ***(dist)***

Munusamy Vengadasalam v. PP [1987] 1 CLJ 250; [1987] CLJ (Rep) 221 SC ***(refd)***

PP v. Gan Boon Aun [2015] 9 CLJ 328 CA ***(refd)***

Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 2 CLJ 771 CA ***(refd)***

Wan Senik Wan Omar v. Majlis Perbandaran Selayang [2017] 10 CLJ 102 CA ***(dist)***

Legislation referred to:
Evidence Act 1950, s. 114(g)
Federal Constitution, art. 5(1)
Street, Drainage and Building Act 1974, ss. 72(1)(b), (6), 97, 120

For the plantiff - Siva Subramaniam, Kartini Devi Manimoly & Venukumar; M/s Subramaniam & Shafiq
For the defendant - Kanesh Sundrum & Nurul Jannah Zakariah; M/s Kanesh Sundrum & Co

Reported by Najib Tamby

JUDGMENT

Anand Ponnudurai J:

Introduction

[1] The present case involves a claim by the registered owner of a piece of land against the defendant Municipal Council for what the plaintiff contends was the unlawful demolition of its building/structure on it with the main contention being that there has been non-compliance by the defendant of the provisions under the Street, Drainage and Building Act 1974 (hereinafter referred to as the "1974 Act"), in particular, with regards to the issuance of various notices prior to such demolition.

[2] The plaintiff's cause of action is predicated on an allegation that the defendant has breached its duty of care to the plaintiff and seeks *inter alia* for declarations that the notices issued by the defendant are void *ab initio*, that the demolition of the plaintiff's premises was wrong as well as damages.

Background Facts

[3] The background facts are largely undisputed and the chronology of facts in my view critical to set out hereinbelow which are as follows.

[4] The plaintiff is a registered owner of a piece of land known as Geran Mukim 895, Mukim 1, Lot 5133, Seberang Perai Selatan, with the address at Lot 46, Jalan Tasek, 14120, Simpang Ampat, Seberang Perai Selatan, Pulau Pinang (hereinafter referred to as the "said land").

[5] The defendant is the Municipal Council for Seberang Perai established under the Local Government Act 1976 (hereinafter referred to as the "LGA 1976").

[6] Sometime in October 2016, the plaintiff who has a furniture business had built a building/structure on the said land which was to be a warehouse/store to place furniture. It is not disputed that the plaintiff never obtained any approval from the defendant to erect this building/structure.

[7] On 12 March 2019, the defendant issued a first notice pursuant to s. 72(1)(b) of the 1974 Act. This first notice was addressed to the owner of the building/structure erected on a piece of land bearing the address of Lot 46, Jalan Tasek, 14120 Simpang Ampat, Mukim 1, Seberang Perai Selatan, Pulau Pinang and requesting to demolish the building/structure on the said land within 14 days of the notice.

[8] The first notice was pasted on the said building/structure considering that the said building/structure was locked and there was no occupant on the said land.

[9] On 20 March 2019, the plaintiff sent a letter to the defendant, referring to the said first notice and sought an extension of time in respect of demolishing the said building/structure on the said land pending the application for "memica" (subdivision) of the said land.

[10] On 26 March 2019, the defendant sent a letter replying to the plaintiff's letter dated 20 March 2019 wherein the defendant stated that the approval of the defendant was required for the building/structure and the plaintiff was required to submit proof of the appointment of the plaintiff's consultant within seven days of such letter.

[11] On 27 March 2019, the defendant served a second notice pursuant to s. 72 of the 1974 Act. This second notice was addressed to the occupier of the building/structure erected on the said land. *Vide* this second notice, the occupier was given 30 days' notice to vacate the building/structure failing which the defendant could enter the building/structure and demolish the same. This notice was served on someone called Shah Alam who acknowledged receipt of the same on 27 March 2019 itself.

[12] On 19 April 2019, the plaintiff appointed an architect, Messrs. Ari Planning as his consultant to submit all the plans to the defendant to support an application to rezone the said land from "agriculture" to "commercial".

[13] The said architect then sent a letter dated 19 April 2019 to the defendant stating its intention to apply to rezone the said land.

[14] *Vide* letter dated 22 April 2019, the said architect informs the defendant of his appointment and request 30 days extension of time to submit the plans and documents required by the defendant and to apply for rezoning ("pemutihan") of the said land.

[15] *Vide* its letter dated 26 April 2019, the defendant granted the plaintiff an extension of 30 days to submit the plans to the defendant. The plaintiff was also required to submit the letter obtaining approval from Jabatan Perancang Bandar dan Desa Negeri Pulau Pinang. In the meantime, the defendant expressly informs that such extension of time is without prejudice to the defendant being able to take enforcement action against the owner/occupier if the earlier notices are not complied with.

[16] On 17 May 2019, the consultant sent a letter applying to rezone the said land from "agriculture" to "commercial" to Jabatan Perancang Bandar dan Desa Negeri Pulau Pinang.

[17] Through a letter dated 11 June 2019, the said consultant requested the defendant to not continue with any action pending the decision on the rezoning application.

[18] Subsequently, the said consultant sent the defendant a letter dated 16 July 2019 informing that the plaintiff would demolish the building/structure in stages.

[19] This was followed by a letter from the plaintiff himself to the defendant dated 17 July 2019 undertaking that he would demolish the building/structure in stages. The plaintiff attached to the letter photographs showing the process already underway of dismantling the back of the building/structure. The plaintiff also testified as follows:

PD: Dalam surat ini you kata pihak kami Kim Hor Furniture memaklumkan kepada Majlis bahawasanya pihak kami akan membuka bangunan berperingkat sebagaimana yang ditetapkan oleh Majlis, ini you hantar pada 17.7.2019 iaitu lebih kurang 4 bulan sebelum perobohan. Soalan saya mengapa tak buka you kata sini mahu buka bangunan, ada buka atau tak ada?

SP1: Tapi ini time kita ada rezoning lagi itu pasal kita tak buka lagi. Kalau rezoning tak lulus baru mahu buka.

PD: Dalam surat ini kamu ada cakap tak kalu rezoning tak boleh lulus baru mahu buka, ada cakap tak?

SP1: Saya tak cakap.

PD: Soalan saya selepas you bagi surat ini dekat Majlis kata saya mahu buka bangunan itu pelan-pelan you ada buka atau tak buka?

SP1: Sebenarnya sava ada buka sikit-sikit. Tepi-tepi semua sudah buka kalau you tengok gambar tadi ada orang kerja buka

PD: Mr Chuah, you kata m/s 63-64 you sudah start buka, betul? Berapa banyak daripada bangunan itu yang you buka?

SP1: Depan dan tepi semua dah buka.

[20] Through the defendant's letter dated 31 July 2019, the plaintiff was given a further extension of time pending the decision for rezoning by the Jabatan Perancang Bandar dan Desa Negeri Pulau Pinang.

[21] *Vide* the defendant's letter dated 5 August 2019, the plaintiff was informed that its application for a licence and advertisement was rejected since the building/structure was constructed without the necessary approvals and the plaintiff was given final notice to stop any business activities on the said land within 14 days.

[22] The plaintiff's application for rezoning was then denied/rejected *vide* a letter from Jabatan Perancang Bandar dan Desa Negeri Pulau Pinang to the plaintiff and the consultant dated 3 December 2019.

[23] On 16 December 2019, the defendant sent a letter addressed to the said consultant referring to the rejection of the rezoning letter dated 3 December 2019 and requested the owner/occupier to comply with the earlier two notices in March within 14 days.

[24] On 2 January 2020, the defendant issued a proviso notice pursuant to s. 97 of the 1974 Act referring to the first notice dated 12 March 2019 and providing 24 hours' notice, notifying that it would enter the premise and demolish the said building/structure. Neither the plaintiff nor his consultant responded to the defendant's letter dated 16 December 2019 or the proviso notice.

[25] On 9 January 2020, the defendant entered the said premise and demolished the building/structure by caving the roof which necessitated and included the removal of the furniture from the said premise.

[26] The plaintiff commenced this present claim against the defendant for loss and damages suffered as a result of the said demolition.

Issues To Be Tried

[27] There are several issues to be tried as agreed by the parties which are as follows:

(i) whether the first and second notices pursuant to s. 72 of the 1974 Act and the proviso notice pursuant to s. 97 of the 1974 Act were issued and/or served properly and/or were there proper service on the plaintiff;

(ii) whether the plaintiff was given reasonable time to vacate and remove the furniture to another place;

(iii) whether the defendant is entitled to enter the plaintiff's premise to demolish the plaintiff's premise when there was non-compliance with the first, second and the proviso notice;

(iv) whether the plaintiff has suffered loss from the defendant's action of demolishing the plaintiff's building/structure;

(v) whether the plaintiff's furniture was damaged and if yes, whether the defendant is responsible for the said losses;

(vi) whether the defendant is allowed to enter the plaintiff's premise to demolish the building/structure when/despite the defendant having collected assessment payments;

(vii) whether the defendant was negligent in carrying out their duties;

(viii) whether the defendant has acted so unreasonably in that no other authority in similar circumstances would have acted in such a manner; and

(ix) whether the plaintiff was deprived of its fundamental liberty as enshrined under art. 5(1) of the Federal Constitution.

Analysis/Findings

[28] I will deal with the issues as they have arisen and submitted upon. Needless to say, it is the defendant's contention that they had complied with all the necessary legal requirements with regards to notices issued to the plaintiff to remove the illegal building/structure and despite giving various extensions of time, the plaintiff failed to do so which entitled them to enter and demolish the same. It is also contended by the defendant that they had acted reasonably at all times.

[29] It is important to note that the plaintiff does not dispute that the land was at all material times zoned as agricultural land and that he was conducting business on the premises without a license and had constructed the building/structure without permission as required by law. It is also not disputed that he had received various summonses for different offences all of which he had paid compounds, but I will deal with this later.

[30] I will now deal with the various issues raised by the plaintiff and provide my analysis and views/decision on them in my endeavour to reach a conclusion as to whether the plaintiff has discharged his burden of proving on a balance of probabilities that he should succeed in his claim herein.

Issue 1 – Was The Service Of The Various Notices Valid?

[31] The plaintiff contends irregular service of the first two notices and the defendant contends that service was valid.

[32] The first notice was addressed to the owner and pasted at the premise whilst the second notice was addressed to the occupier and was received by one Shah Alam who the plaintiff admitted was his employee at the premise. The plaintiff testified as follows:

PD: Mr Chuah tengok m/s 2 Ikatan B, notis tahu apa? Sebab Mr Chuah tak bagi bukti kepada Majlis kata sudah melantik 18 perunding. Majlis pada 27.3.2019 ada bagi ini notis di m/s 219 kepada Mr Chuah, setuju?

SP1: Itu saya tidak tahu.

PD: Di bawah sini ada kata Shah Alam siapa tu Shah Alam?

SP1: Dulu saya punya pekerja Bangladesh.

[33] Firstly, although the first notice was pasted on the building/structure on 12 March 2019, there can be no doubt that the plaintiff was aware of it. This is because the plaintiff had on 20 March 2019 in his letter to the defendant requested an extension of time to demolish the building/structure and had expressly referred to the said first notice dated 12 March 2019.

[34] In any event, in my view, the manner of service was not irregular in light of s. 120 of the 1974 Act which allows pasting at the plaintiff's address.

[35] The SSM search of the plaintiff also indicated the place of the illegal building/structure as one of its branches *ie*, Jalan Tasek, Simpang Ampat, Seberang Perai Selatan, Pulau Pinang. Section 120 of the 1974 Act also provides that notices addressed to the 'owner' or 'occupier' is sufficient and deemed as proper service. Hence, I would conclude that service of the notices was proper and had in fact been received by the plaintiff.

Issue 2 – The Plaintiff's Contention That The Notices Were Defective And That The Subsequent Demolition On 9 January 2020 Was Wrong And That Insufficient Time Was Given To The Plaintiff To Vacate Which Has Caused Him To Suffer Losses

[36] Whilst the chronology of events and the facts are not disputed, a perusal of para. 21 of the plaintiff's written submissions will reveal that the gravamen of his complaint is that, rather than being given a mere 24 hours' notice as per the proviso notice dated 2 January 2020, the defendant ought to have issued a fresh 30 days' notice to vacate after the rezoning application had been rejected.

[37] In this regard, there is no dispute that after the first and second notices were issued in March 2019, the defendant had granted various extensions of time to the plaintiff and also to his consultant as requested pending the rezoning application. There is no dispute that the rezoning application was rejected *vide* letter dated 3 December 2019 and the defendant issued another letter thereafter dated 16 December 2019 providing a further 14 days to comply with the first two notices. This was then followed by the proviso notice dated 2 January 2020. Is there any merit in the plaintiff's contention that a further 30 days' notice ought to have been issued after such extensions and after the rezoning application was rejected? In my view, bearing in mind the provisions of s. 72 of the 1974 Act, there was no requirement to reissue another fresh 30 days' notice.

[38] Firstly, s. 72(1)(b) of the 1974 Act provides that once the local authority is satisfied that an illegal building has been erected, it may serve on the owner of the land a notice to demolish the building within a time as may be specified. This in my view was certainly complied with *via* the first notice which was issued to the owner to demolish the said building/structure within 14 days.

[39] Section 72(6) of the 1974 Act then provides that if the building is not demolished, it may be thus demolished by the local authority, and in such case, it shall then give the occupier of the building no less than 30 days to vacate and the authority may then after such period enter the said building. This in my view was exactly what was complied with *via* the second notice dated 27 March 2019.

[40] There is no dispute that the local authority had granted various extensions of time requested by the plaintiff or his consultant and that too with their undertaking to demolish the same. I see nothing in the 1974 Act that provides that any demolition must be done immediately after the expiry of the 30 days' notice. All it says is that at least '30 days' notice be given. Surely, it can reasonably be expected that there will be appeals from owners for extensions of time and that the authority has some discretion on the said matter. I find it quite inequitable for the plaintiff to have requested and having been granted extensions of time to now use the very same indulgence of the defendant against them.

[41] In any event, I see nothing in s. 72 of the 1974 Act that mandates a fresh notice every time any extension of time is granted. It makes no sense that a fresh notice needs to be issued when the owner/occupier has already received a notice that the building/structure is illegal and is liable to be demolished if not regularised. Otherwise, it would lead to a situation where an owner could apply for extensions all the time with a view of delaying and in fact, on the converse may lead to situations where extension of time may not be granted with the authority then mandated to demolish after 30 days. This surely could not have been the intended scheme of s. 72 of the 1974 Act.

[42] My view above that no further notice is required is fortified by the contents of the second notice dated 27 March 2019 itself which expressly states as follows:

> Sila ambil perhatian bahawa jika kamu gagal atau ingkar mematuhi kehendak notis ini, MAJLIS PERBANDARAN SEBERANG PERAI **tanpa notis selanjutnya** boleh selepas tamat tempoh notis ini memasuki bangunan itu dan memindahkan sesiapa jua atau apa-apa harta alih yang terdapat dalamnya ke suatu tempat yang sesuai dan ditinggalkan di sana atas risiko pemunya ... MAJLIS PERBANDARAN SEBERANG PERAI tidak akan bertanggungjawab terhadap sebarang kerosakan, kerugian atau apa-apa tuntutan akibat tindakan yang diambil. (emphasis added)

[43] Moving on to the issue of whether sufficient time to vacate was given. As seen earlier, the plaintiff and his consultant had applied for an extension of time to await the decision on their application for rezoning with both giving undertakings that the illegal building/structure would be demolished as seen in the letters dated 16 and 17 July 2019 respectively. Such a request

for an extension of time was granted. The plaintiff was then issued a letter dated 3 December 2019 informing that the application to rezone was rejected. Having received the same, in my view, the plaintiff should have then taken immediate steps to fulfil its undertaking and demolish the building/structure in light of the previous notices. The plaintiff did not do so nor did he request any further extension of time. In my view, although there was no need to, the defendant then issued a letter dated 16 December 2019 giving the plaintiff a further 14 days to comply with the earlier two notices. The plaintiff failed to do so nor request for any extension of time to vacate.

[44] This then led to the issuance of s. 97 proviso notice which the plaintiff contends was issued in error when s. 72(6) of the 1974 Act provides for 30 days' notice. The plaintiff further submits that the proviso should be read as a whole with s. 72 of the 1974 Act. With respect, I disagree. In my view, a reading of s. 97 of the 1974 Act generally and clearly provides that the local authority has the power to enter any building/structure to execute the demolition provided that it may not enter a dwelling house in actual occupation except with the consent of the occupier OR by giving 24 hours prior notice. This proviso to an occupier of dwelling premises is lucid so as to allow occupants to vacate the premises. I have no hesitation in accepting the evidence of SD2 (Penolong Pengarah Kanan, Jabatan Direktorat Penguatkuasaan, Majlis Bandaraya Seberang Perai, Pulau Pinang) that this proviso notice was issued more out of courtesy and that there was no need to actually issue the same as it was not a dwelling house which is defined as one for human habitation, which clearly was not the case here.

[45] In fact, the plaintiff now takes umbrage that the proviso notice was issued nine months after the first two notices but with respect, I do not see the issue of that, especially when considering that the nine months was on account of the plaintiff himself seeking extensions of time which the defendant had allowed.

[46] In the upshot, I find and conclude that the notices issued were valid. In my view, the plaintiff had more than ample time to vacate the said building/structure and the actions/conduct of the defendant was reasonable at all material times and not tainted by *Wednesbury* unreasonableness as contended by the plaintiff.

[47] The plaintiff also contends that there was a legitimate expectation on the part of the plaintiff that as a public body administering public law, the defendant should adhere to certain procedures before action is taken especially after nine months as in this case. Whilst I would agree that such an expectation for public bodies to adhere to procedures is legitimate, for the reasons stipulated earlier, there was no flaw in the procedure adopted by the defendant and there was no obligation to issue again another 30 days' notice to the plaintiff.

Estoppel?

[48] The plaintiff contends that having appointed Ari Planning and having granted the extension of times as requested, the defendant was estopped from entering and demolishing the illegal building/structure. Again, with respect, quite apart from estoppel not being pleaded, in any event, having considered this issue, I find no merits in this contention. In this regard, learned counsel for the plaintiff submits that there were ongoing negotiations and mediations between the parties which in my view is inaccurate. Whilst the defendant acceded to the appeal for time to submit applications for approvals, these were not negotiations in my view.

[49] Furthermore, and crucially, I have noted that in each and every letter of the defendant granting the extension of time, the defendant had expressly reserved its right to proceed with enforcement action under the notices that had already been issued to the plaintiff. There was never any representation made to the plaintiff that no enforcement action would be taken or for that matter, a further 30 days' notice would be given. I see nothing on the facts which requires equitable intervention to invoke estoppel against the defendant, especially against a local authority carrying out its statutory function in relation to demolishing an illegal building/structure.

[50] In this regard, the plaintiff has attempted to rely on various decided cases such as the Federal Court case of *Boustead Trading (1985) Sdn Bhd v. Arab-Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283; [1995] 3 MLJ 331; High Court case of *Majlis Perbandaran Seberang Perai v. Four Winds Freight Logistics Sdn Bhd* [2012] 9 MLJ 627; and the Court of Appeal case of *Mayland Valiant Sdn Bhd v. Majlis Perbandaran Subang Jaya* [2018] 7 CLJ 165; [2018] 4 MLJ 685. However, I find them to be of no assistance as the facts in them clearly distinguishable.

Other Issues

[51] The plaintiff questions the validity of the format in respect of the said notices as they are not prescribed in the 1974 Act. Quite apart from this issue not being pleaded, I do not see how this assists the plaintiff's case. The very fact that Parliament has not seen fit to provide statutory forms clearly reflects that it is left to the discretion and wisdom of the local authority to draft the notices. In any event, I see nothing prejudicial in that the notices refer to the exact provision and the contents are unambiguous.

[52] The plaintiff then refers to the various compounds issued by the defendant as per the documents. It is not disputed that the plaintiff paid all these compounds. The plaintiff relies on the decision of the Court of Appeal in the case of *Wan Senik Wan Omar v. Majlis Perbandaran Selayang* [2017] 10 CLJ 102; [2017] MLJU 1077 and submits that having opted to offer to compound the offences, the defendant then cannot proceed to pursue the demolition as this amounts to double jeopardy or double punishment.

[53] However, with respect, the facts of that case are distinguishable. In the case of *Wan Senik* (*supra*), such a conclusion was reached as the offender there was issued compounds for the offence of erecting illegal structures. However, in the case at hand, a perusal of the compounds will reveal that they were issued for different offences such as for carrying out a business without a license and for having advertisement banners without a license under Undang-Undang Kecil (Iklan) Majlis Perbandaran Seberang Perai 2001. There was never a compound for the illegal structure issued under the 1974 Act.

[54] In the same vein, there is no dispute that the plaintiff was charged and paid assessment for his land and it is now submitted that this means that the defendant took into account and accepted the illegal structure. Quite apart from the fact that the defendant had clearly at all material times informed the plaintiff that it objected to the illegal structure, I have considered and accepted the evidence of the defendant's Senior Assistant Director of Valuation (SD3) when he testified that imposition and payment of assessment was not an acceptance of the illegal building/structure. He further testified that assessment is charged on all land and structures irrespective of whether such structures are approved. In so far as the rate of assessment, he also testified during examination in chief that valuation is done based on the '*rebus sic stantibus*' principle which means 'things standing thus' and is based on actual use and not on whether the building/structure is illegal or otherwise. I note that this evidence of SD3 on an expressly pleaded part of the defendant's defence as at para. 17 was not at all challenged in cross-examination and I have no hesitation in accepting such evidence.

[55] Next is the issue of the existence and non-production of a 'laporan siasatan tapak' by the defendant. There is no dispute that SD1 (Penolong Pengarah Kanan Jabatan Bangunan, Majlis Bandaraya Seberang Perai) had indeed testified that it was standard procedure that an investigating officer would provide a "laporan siasatan tapak" prior to issuing the said notices. This "laporan" was not produced and the plaintiff urges this court to invoke s. 114(g) of the Evidence Act 1950 against the defendant. In my considered view, s. 114(g) of the Evidence Act 1950 is only to be invoked where there is a withholding of material evidence. (See the case of *Munusamy Vengadasalam v. PP* [1987] 1 CLJ 250; [1987] CLJ (Rep) 221).

[56] In this case, bearing in mind that the building/structure was proven to be an illegal structure and the various notices properly issued, I do not see how and in what manner such "laporan siasatan tapak" could be considered material so as to justify the invocation of s. 114(g) of the Evidence Act 1950 against the defendant.

A *Was There A Deprivation Of The Plaintiffs Livelihood And Losses Suffered?*

[57] The plaintiff relies on art. 5 of the Federal Constitution and the case of *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 2 CLJ 771; [1996] 1 MLJ 261 and submits that the demolition has caused him losses and deprived him of his livelihood. From the photographs adduced, B whilst it can be assumed that the plaintiff has indeed suffered some losses as a result of the demolition on 9 January 2020, who is it attributable to – the defendant or the plaintiff himself? In my view, the latter. It is trite law that art. 5 of the Federal Constitution is not a total prohibition and allows such deprivation if it is in accordance with the law. (See the case of *PP v. Gan Boon* C *Aun* [2015] 9 CLJ 328; [2015] 6 MLJ 32). In my view, as discussed earlier, having followed the requisite procedure, the demolition of the said building/ structure was in accordance with the law and hence art. 5 of the Federal Constitution was not violated.

Conclusion

D

[58] In conclusion, upon a careful consideration of the facts and the applicable law, I am of the considered view that the plaintiff has failed to prove his claim on a balance of probabilities. To sum up, I find the notices issued by the defendant properly issued and served on the plaintiff. The E plaintiff was given more than adequate time to vacate. The defendant was not estopped from entering and demolishing the illegal structure on account of there being compounds issued for different offences and assessments collected. Similarly, the granting of the extensions of time did not estop the defendant nor did it require them to issue a fresh 30 days' notice pursuant to s. 72(6) of the 1974 Act. When considering the evidence as a whole and F in particular, the conduct of the defendant, I am certainly unable to conclude that they have conducted themselves so unreasonably or have exercised their powers arbitrarily or with tyranny as submitted by the plaintiff. In my considered view, they were at all material times merely properly carrying out their statutory functions entrusted upon them.

G

[59] On the contrary, in my opinion, this was clearly a case of the following:

(i) a landowner who had admittedly constructed an illegal building/ structure without approval;

H (ii) who had received requisite notices to demolish and vacate, yet did not do so despite his undertaking to do the same;

(iii) who had applied and allowed extensions of time to enable him to make proper applications;

I

(iv) such applications having been denied, the plaintiff ought to have taken steps to vacate and demolish but he did not; and

(v) the defendant sent a further notice on 16 December 2019 as well as a further proviso notice on 2 January 2020, yet the plaintiff did nothing.

[60] In light of all these circumstances, in my considered view, the defendant was entitled to conduct themselves as they did on 9 January 2020 without the need to issue fresh 30 days' notice under s. 72(6) of the 1974 Act.

[61] With my conclusions above, it is sufficient to dismiss the plaintiff's claim and there is no need for me to consider the issue of damages as I have found no breach of statutory duty by the defendant. However, in any event, assuming I am wrong on the issue of liability, I would not have been inclined to order any damages anyway for the following reasons.

[62] It is trite law that the burden of proof rests on the plaintiff to prove both the fact and quantum of damages suffered, if any. In the Federal Court case of *Datuk Mohd Ali Hj Abdul Majid & Anor v. Public Bank Bhd* [2014] 6 CLJ 269; [2014] 4 MLJ 465, Arifin Zakaria CJ held as follows:

> [32] It is trite law that a claimant claiming damages must prove that he has suffered the damage. *The claimant has the burden of proving both liability and quantum of damages, before he can recover the sum claimed.* This follows from the general rule that the burden of proving a fact is upon him who alleges it and not upon him who denies it, so that where a particular allegation forms an essential part of a person's case, the proof of such allegation falls on him (see s. 103 of the Evidence Act 1950). *If he fails to prove both the liability and the quantum of damages, he loses the action.*
>
> [33] Therefore, in a claim for damages, it is *not sufficient for the plaintiff to merely state the amount of damages that he is claiming, he must prove the damage that he had in fact suffered to the satisfaction of the court.* This principle is borne out in the case of *Bonham-Carter v. Hyde Park Hotel* (1948) 64 TLR 177 where Lord Goddard CJ observed:
>
> > Plaintiff's must understand that if they bring actions for damages it is for them to prove their damage; it is not enough to write down the particulars, and, so to speak, throw them at the head of the court, saying: 'This is what I have lost, I ask you to give me these damages.' They have to prove it.
> >
> > This statement was cited with approval by Edgar Joseph JR FCJ in *Tan Sri Khoo Teck Puat v. Plenitude Holdings Sdn Bhd* [1994] 3 MLJ 777.
>
> [34] The claim by the plaintiff in the present case is for *general and special damages arising out of breach of contract and/or negligence. Therefore, the burden rests on the plaintiff to prove the damages and it is not sufficient for the plaintiff to merely assert that he had suffered such damages without proving it* (see *Admiralty Comrs v. SS Susquehanna* [1926] AC 655 and *Bolag v. Hutchison* [1905] AC 515) ... (emphasis added)

[63] In this respect, the plaintiff complains that he had to rent new premises. In my view, bearing in mind that his land was designated as agricultural and not commercial and the building/structure was illegal, him having to rent elsewhere was not a result of the demolition but a circumstance that was mandated/required anyway. In so far as his claim for damages of RM600,000 being losses for the ruined furniture, with respect, I find that the plaintiff has fallen far short of proving such losses. The fact that the plaintiff sought to postpone the trial to have more time to appoint an expert to determine his losses fortifies my view that it could not be satisfactorily proven at trial. Learned counsel has also in his written submission urged me to invoke my inherent jurisdiction to order an assessment of damages now. However, with respect, there was no request let alone an order to bifurcate this trial and to do so now after the trial and submissions are concluded would be highly prejudicial to the defendants so as to prevent me from invoking such inherent jurisdiction.

[64] Further, in my view, the reliance by the plaintiff merely on pictures that show the pulled-down structure and possible damages to some of the furniture was insufficient to support a claim for RM600,000. In any event, the demolition entailed caving in the metal roof and the defendant's officers had assisted the plaintiff to remove some goods/furniture. In addition, there was no evidence to justify the claim for RM600,000 as the plaintiff himself admitted that he could not prove the same and he really could not say much about the accounts as he did not prepare them and was not well versed with them. The person who prepared the accounts did not testify in court as well.

[65] Furthermore, on this issue of damages, I find merit in the defendant's contention that the plaintiff's claim for damages should not be allowed due to his own unlawful conduct based on the maxim of "*ex turpi causa non oritur* action" as the plaintiff had admitted under cross-examination that having no business license, he was thus carrying out his business unlawfully.

[66] Finally, on this issue of possible damages, in my view and with due respect, the plaintiff is the author of his own misfortune. With full knowledge that he was conducting business without a license and in an illegal building/structure to boot, and especially after having been given notices to demolish and vacate, why he did not just do so once he knew his rezoning application was not allowed on 3 December 2019 is beyond me. At worst, if at all there was insufficient time to vacate the premise, the plaintiff should have at least asked for an extension of time to move his things out which he did not. The plaintiff testified that it was very expensive to demolish the structure *ie*, RM10,000 but yet, I find it incongruous that he on the one hand testifies that he could not afford the RM10,000 to demolish, yet testified that he had moved in a lot of furniture in light of the impending Chinese New Year.

[67] In my opinion, even if he did not want to spend money to demolish, he was certainly foolish to have brought more furniture in with the full knowledge of the fact that it was an illegal building/structure and the notices were already issued. Rather than bringing in new furniture, in my opinion, he ought to have mitigated the situation and/or possible losses by removing whatever furniture that was there.

[68] As such, upon a careful analysis and judicious consideration of the facts and the law, I am constrained to dismiss the plaintiff's claim with costs of RM40,000 subject to allocator.